

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

JERRY LEE DOUGLAS,
Petitioner,
vs.
SUPERINTENDENT ZEE HYDEN,
Respondent.

3:03-cv-0221-JWS-JDR

**FINAL RECOMMENDATION
REGARDING AMENDED
PETITION FOR WRIT OF
HABEAS CORPUS**

(Docket No.13)

The Magistrate Judge has reviewed the petitioner's objections and the respondent's reply thereto regarding his recommendation the petition for writ of *habeas corpus* be denied. (Docket Nos. 118 and 119). Nothing in the briefing would cause the Magistrate Judge to modify his initial recommendation. A few comments, however, are in order.

First, Mr. Douglas complains that the recommendation failed to consider the first prong of *Strickland v. Washington*, 466 U.S. 668, 685 (1984). As discussed in the recommendation, the court may consider the second prong – the prejudice prong – of *Strickland* alone. *Young v. Runnels*, 435 F.3d 1038, 1043 (9th Cir. 2006). Additionally, on a related score, his objections regarding whether certain evidence would have been admissible if discovered by his trial counsel are a rehash of his previous arguments.

Next, Mr. Douglas objects to the recommended conclusions that the decision of his trial counsel to play tapes of witness Ali's prior statements was an acceptable strategic choice. He submits: "There was no evidence of any strategic gain or advantage to be obtained from failing to introduce the evidence." The legal standard discussed in the recommendation does not include a component of "evidence of any strategic gain", and Douglas offers no authority for this position. His other arguments on this issue are a rehash of his previous arguments.

Douglas also resubmits his previous arguments on the issue of lesser included offense instruction, and on the prosecutorial misconduct issue. In sum, Douglas' objections to the recommendation that his petition be denied are mostly repetitive of his previous arguments, and are otherwise without merit.

CONCLUSION

For the foregoing reasons the Magistrate Judge declines to modify his recommendation that Mr. Douglas amended petition for writ of *habeas corpus* (Docket No. 13) be **DENIED**. Additionally, the Magistrate Judge remains convinced that the expansion of the record and, or, an evidentiary hearing are not warranted for the reasons discussed at Docket Nos. 111 and 113.

DATED this 4th day of January, 2007, at Anchorage, Alaska.

/s/ John D. Roberts
JOHN D. ROBERTS
United States Magistrate Judge